

## SETTLEMENT OF INDIVIDUAL LABOUR DISPUTES IN POLAND<sup>1</sup>

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*SUMMARY: I. Preliminary remarks; 1. Notion of the individual labour dispute; 2. Evolution of the system of individual labour disputes settlement. II. Conciliation procedure; 1. General characteristic of the conciliation procedure; 2. Agreement. III. Judicial way of individual labour disputes settlement; 1. Labour courts; 2. Principles of individual labour disputes settlement before the court. IV. Trade unions' role in the individual labour disputes; 1. General remarks; 2. Trade unions' assistance to an employee before the labour court. V. Final remarks.*

### I. PRELIMINARY REMARKS

#### *1. The notion of the individual labour dispute*

In the Polish labour law system the subject of an individual labour dispute is an individual claim arising from the employment relationship, vindicated by an employee or by an employer. The individual labour dispute is distinguished from a collective labour dispute which covers employees' claims, concerning their collective interests —conditions of work, wages or social benefits—, as well as their union rights and freedoms.<sup>3</sup> Furthermore, a collective dispute cannot be entered into to support an individual claim even if a number of employees vindicate the same claim.<sup>4</sup>

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3 Art. 1 of the Act of 23 May 1991, on the settlement of collective labour disputes / Journal of Laws 1991, No. 55, item 236.

4 Art. 4.1 of the 1991 Act quoted above.

## 2. *Evolution of the system of individual labour disputes settlement*

After the World War II the system of settlement of individual labour disputes in Poland underwent many changes. Initially, individual labour disputes were considered by labour courts, established already in 1934. However, under the communist regime the labour courts were liquidated / 1954 / and the non-judicial system for all employees' individual claims was adopted. It was based on works arbitration committees, considering individual labour disputes in the first instance and on national trade union branch organs examining appeals in the second instance.

In 1974 the labour and social security courts were re-established as organs separated from general jurisdiction, settling individual claims in the second instance. In the first instance works arbitration committees still functioned operating but outside the work establishments, additionally, first instance organs were at that time created. They were also non-judicial bodies, known as appeal committees for labour affairs, settling only disputes involving termination of employment.

The non-judicial system of settlement of individual labour disputes adopted in Poland after the World War II followed the soviet model and as such was typical for all communist countries. It has to be underlined that this system reserved non-judicial way only for employees' claims. At the same time all employers' claims arising from employment relationship were considered by ordinary civil law courts. Thus, workers were deprived of the constitutional right to make a recourse to the court.<sup>5</sup> The system was based on involving large unions in the settlement of disputes, following another soviet rule according to which communist trade unions had to participate in the State's powers to prove its democratic character. However, the non-judicial system of settlement of individual labour disputes was largely ineffective as it never gained the full confidence of the employees.

The full reestablishment of judicial system for settlement of individual labour disputes took place in 1985, as an element of the transformation process in Poland, which was initiated under the influence of the democratic opposition with the "Solidarity" trade union at a head. Since then,

<sup>5</sup> See more M. Matey, *Labour Law and Industrial Relations in Poland*, Kluwer Law and Taxation Publishers, Deventer-Boston 1988, at 132,133 and M. Sewerynski, *Polish Labour Law from Communism to Democracy*, Dom Wydawniczy ABC Publ., Warsaw 1999, at 18 and foll.

the labour courts became the integral part of judiciary and they consider individual labour disputes in both instances. Although in 1985 the conciliation procedure for these disputes was also established, it did not undermine the fundamental role of labour courts. Trade unions are no more charged to participate in making judgement. Instead of that, they can assist a claiming employee, according to their proper protective function.

## II. CONCILIATION PROCEDURE

### 1. *General characteristic of the conciliation procedure*

Although the Polish legal system grants an employee, as well as an employer the access to the court with claims arising out of the employment relationship, it maintains, at the same time, one extra-judicial procedure, namely the conciliation. According to the art. 241.2 of the Polish Labour Code, before submitting a case to the court, an employee may demand initiation of conciliation procedure before a conciliation commission. It means that conciliation is of optional character and cannot be considered as a preliminary condition to enter on a judicial way. Furthermore, the conciliation could be started exclusively by an employee.

The conciliation is carried out by the conciliation commission at the workplace. The conciliation commission is an extra-judicial body which may be appointed in every works, jointly by the employer and the works trade union body. When no trade union body exists in a works the commission is established by the employer, upon receipt of consent thereto from the employees (art. 244.3 L.C.). In the same way are established the rules and procedures for the appointment of the commission, its term of office and the number of its members (art. 245 L. C.). A conciliation commission shall appoint, from among its members, a chairman of the commission and his/her deputies and shall establish the rules of conciliation proceedings (art. 247 L. C.).

The members of conciliation commission are elected from among personnel of a given works. However, the following persons may not be members of a conciliation commission:

- a. the manager of a works acting on behalf of the employer,
- b. the chief account,

c. the legal adviser,

d. the person responsible for the matters of personnel, employment and remuneration (art. 246 L. C.).

To fulfil a duty of a member of a conciliation commission is an honorary public function. However, a member of a conciliation commission retains the right to remuneration for the period in which he/she does not work due to his/her participation in the work of such a commission (art. 257 L. C.).

An employer is obliged to provide a conciliation commission with premises and technical means enabling it to function appropriately. Furthermore, an employer must bear the expenses connected with the activity of a conciliation commission, including the remuneration lost by an employee due to his/her participation in the conciliation proceedings (art. 258 L. C.).

## 2. *Agreement*

A conciliation commission shall initiate proceedings upon a written or oral application of an employee, recorded in the register. However, the general rules concerning limitation of claims arising from the employment relationship shall be respected (art. 291 and following of the Labour Code), as well as some particular limits of time when the employee's claim refers to the termination of employment, reinstatement in employment or a demand to establish an employment contract (art. 251.3 and 264 L. C.).

The conciliation commission should endeavour to settle a case by an agreement within 14 days beginning from the date of the submission of the application. In the case of termination, expiry or establishment of an employment relationship, the conciliation proceedings shall be terminated by the force of law within 14 days of the submission of the application by an employee and in other cases within 30 days of the submission of the application (art. 251 L.C.). Taking into consideration its conciliatory character, a conciliation commission is not authorised to impose its decision on the parties to the disputes. But the commission may suggest to the parties a way to reach an agreement.<sup>6</sup>

<sup>6</sup> See L. Florek, T. Zielinski, *Prawo pracy (Labour Law)*, second ed., C. H. Beck, Warszawa 1999, at 279.

If proceedings before a conciliation commission do not result in the conclusion of an agreement, the commission, upon the demand of the employee, should transfer immediately the case to the labour court. The application of the employee for a conciliation settlement of the case by the conciliation commission substitutes a claim. Instead of submitting this application, the employee may bring himself a suit to the labour court under general rules of procedure (art. 254 L. C.).

If the parties reach an agreement before a conciliation commission, it should be recorded in the minutes of the session of the bench and signed by the parties and by the members of the bench / art. 252 L. C. /. However, it is inadmissible to conclude an agreement incompatible with law or with the rules of the community life (art. 253 L. C.).

An agreement reached before a conciliatory commission is voluntarily implemented by the employer. Where an employer does not implement an agreement he/she may be submitted to the compulsory execution, according to the Code of Civil Procedure, after a court has ordered its enforcement. However, the court should refuse the clause of enforcement if the documents presented by the conciliatory commission reveal the agreement to be incompatible with law or the rules of the community life (art. 255 L. C.).

An agreement concluded before the conciliatory commission makes end to the dispute. It means in particular that the same claim cannot be pursued by an employee before a court. If it is the case, an employer, according to the Supreme Court, may raise an objection *exceptio rei transactae*.<sup>7</sup> But, within a period of 30 days, from the day of concluding an agreement, an employee may apply to the labour court for a declaration that the agreement becomes ineffective when he/she considers that it infringes his/her just interest. However, in cases involving termination, expiry or establishment of the employment relationship an employee may make an application to a court only during the period of 14 days from the day of concluding the agreement (art. 256 L. C.). This particular action may be undertaken only by an employee as it was set up to protect him/her from the abuse of power by an employer during proceedings before a conciliation commission.

<sup>7</sup> This opinion was expressed by the Supreme Court in the case No. I PKN 143/97; OSN No. 7-8/1998, poz. 128.

The aim of the conciliation procedure in the system of settlement of individual labour disputes is to facilitate an employee to pursue his/her claims arising from the employment relationship. For this procedure is located in the works i.e. close to the place in which the dispute appeared, which allows a conciliation commission to take into account all its particular circumstances. Furthermore, a conciliation is favourable to maintain a good relationship between a claiming employee and the employer as this procedure aims at concluding an agreement. At the same time a conciliation is not risky for the employee, as he/she may apply to the labour court to make control over a rightness of an agreement in the light of his/her interests.

However, in practice the role of conciliation in the settlement of individual labour disputes is not very important. In many works, particularly in the private sector, the conciliation commissions are not appointed, as neither the employer nor employees are interested in it. But even in works in which a conciliation commission exists employees rarely submit their claims to it having an open way to the court. Thus, one can conclude that employees have more confidence in the judicial way of labour disputes settlement.

### III. JUDICIAL WAY OF INDIVIDUAL LABOUR DISPUTES SETTLEMENT

#### 1. *Labour courts*

The labour courts, as established in Poland in 1985, are not fully separate courts in the judiciary but the specialised chambers in the civil law courts.<sup>8</sup> These chambers are established in the district courts, regional courts and appeal courts. Nevertheless, these chambers are formally called as “District Labour Courts” (chambers in district courts) and “Regional Labour and Social Security Courts” (chambers in regional courts) and are composed of judges specialised in labour matters.

Within the jurisdiction of labour courts fall all employees’ claims arising from the employment relationship (art. 262.1 L. C.), as well as claims connected with the employment relationship (art. 476.1 Code of Civil

<sup>8</sup> See more K. Baran, *Sadowy wymiar sprawiedliwosc w sprawach z zakresu prawa pracy (Jurisdiction in the labour law cases)*, Dom Wydawniczy ABC Publ., Warszawa 1996, at. 72 and foll.

Procedure; hereinafter will be quoted as “C.C.P.”). The latter are now here defined or enumerated by the law and that’s why the final specification of those claims belong to the court. But according to the juristic doctrine this second type of claims arises from a legal relationship which is closely connected with the employment relationship. An example of that claim could be the employee’s family claim for a death benefit from an employer in the event of the death of an employee (art. 93 L. C.).<sup>9</sup>

According to separate legal provisions, labour courts examine also claims arising from specific legal relationships other than the employment relationship, e.g. home employment relationship and claims concerning compensation of accidents at work as well as occupational diseases.

Typical employees’ claims relate to:

- a. establishment of an employment relationship, its expiration and termination,
- b. wages and benefits,
- c. severance pay,
- d. compensation and benefits due in the event of accidents at work and occupational diseases.

Within the jurisdiction of labour courts fall also employer’s claims vindicated from an employee. Typical employer’s claims relate to:

- a. compensation of damage caused by an employee,
- b. compensation for unjustified termination of a contract of employment by an employee without notice (art. 61.1 and 61.2. L. C.),
- c. compensation for damage resulted from an employee’s violation of a prohibition on competition (art. 101.1.2 L. C.).

Beyond the jurisdiction of labour courts are claims of civil servants, as well as those concerning the establishment of new terms of work and pay, the application of work standards and workers’ accommodation do not fall within the jurisdiction of labour courts (art. 262.2 L. C.). The disputes arising from the establishment of new terms of work and pay are considered as collective labour disputes and are settled according to the procedures proper to them.

From the sentence of the court of first instance, i.e. a District Labour Court, an appeal may be submitted to the court of second instance, i.e.

<sup>9</sup> See Florek, Zielinski, *Prawo pracy*, at 283.

the Regional Labour and Social Security Court. The cases in which the value of the claim is higher than 15,000 PLN = 3,500 USD are considered in the first instance by Regional Labour and Social Security Courts and in the second instance by Appeal Courts. From a final sentence may be submitted a cassation to the Supreme Court, based on a violation of a substantive law or serious violation of proceedings (art. 393.1 of the C. C. P.). However the cassation is inadmissible in minor cases (claim's value lower than 5000 PLN = 1200 USD), as well as when the case concerns a certificate of employment or benefits regulated by collective agreements.

## 2. Principles of individual labour disputes settlement before the court

### a) taking care of employees' interests

This principle consists in granting an employee a necessary aid in the proceedings to counter balance an actual advantage of an employer who is normally more experienced and better equipped to litigate. The above principle is particularly illustrated by a court's duty to protect an employee from acts infringing his/her just interests (art. 469 C.C.P.), as for example: conclusion of unfavourable agreement or withdrawal of a claim.

Furthermore, the court has to find out the objective truth examining a case. For this purpose it has to undertake all necessary acts and to admit all necessary evidences *ex officio*, even not supplied or requested by an employee and the employer. This is one of the principle of the whole civil procedure, but of special importance for an employee's interests in labour law disputes.

The principle of particular care for the employees' interests in a trial is reflected also in provisions allowing to act on a less formal way and to be assisted by trade unions.

### b) Settling a dispute by an agreement

The procedure of conciliation before a conciliation commission, aiming at concluding an agreement at a workplace serves this principle first of all. The labour court must also persuade the disputing parties to conclude an agreement during the explanatory proceedings opening a process



(art. 468.2.2 C.C.P.). The explanatory proceedings constitute a mandatory part of recognition of every labour law dispute by a court.

#### c) Rapidity of proceedings

This principle means that the labour court has to settle a case as quickly as possible. Furthermore, the Code of Civil Procedure imposes on the court short time limits to recognize a case. It is illustrated by the provision which charges the court with an obligation to fix a date for a hearing no later than within two weeks after the explanatory proceedings (art. 471 C.C.P.).

The rapidity of proceedings is guaranteed also by the provision allowing the court to summon parties, witnesses and experts on simplified way which is specified by the court. The court has a similar power in issuing its decisions preparing a trial, particularly in collecting all necessary documents (art. 472.1 C.C.P.).

Nevertheless, the principle of proceedings' rapidity does not preclude the court's duty to investigate every case profoundly in order to discover the whole objective truth and respecting all binding provisions of the law.

#### d) Limited juristic formalism

The provisions regulating a trial concerning labour law cases are less rigorous than those referring to the general civil law procedure. This principle applies mainly to the dispute parties who may undertake acts in court proceedings on a less formal way. It is particularly illustrated by the provision which allows employees to file a suit and an appeal, as well as to undertake other acts during a trial not in written but in an oral form (art. 466 C.C.P.).

The law is much more rigorous as far as formalism of court's acts in proceedings are concerned. In this respect it is particularly important that every court session has to be recorded and that its final decision has to be written. Furthermore, the final decision is delivered to the parties by the court *ex officio*.

### e) Free of charge procedure

Proceedings in respect of claims by an employee arising from his/her employment relationship are exempt from court fees. Expenses connected with matters done during these proceedings are provisionally borne by the State Treasury. The labour court decides finally on such expenses in a sentence concluding proceedings at given instance, applying the relevant provisions relating to costs in civil matters. However, an award of costs may be made against an employee only in particularly substantiated cases (art. 263 L. C.).

The conciliation procedure before a conciliation commission is also free of charge for an employee as all expenses connected with the activity of the commission are borne by the employer (art. 258 L. C.).

## IV. TRADE UNION'S ROLE IN THE INDIVIDUAL LABOUR DISPUTES

### 1. *General remarks*

The Polish system of settlement of individual labour disputes is marked by an important role of social factor which corresponds to the particular character of these disputes, determined by strong social aspects of labour relations from which they arise. The presence of the social factor manifests itself, first of all, in the conciliation procedure which is of a non-judicial character and is instituted by lay members of the commission, elected from among the works personnel. Thus, the conciliation is a method to settle a dispute without a participation of professional judges and beyond the judicial proceedings. Furthermore, the dispute is concluded by the parties' agreement, and not by the sentence empowered by the court.

The social factor is also present in the proceedings before the labour court. It is illustrated particularly by the lack of compulsory barrister's counselling on the side of an employee. Instead of that he/she may be represented in a trial by another employee, employed in the same works, or by a trade union representative (art. 465 C.C.P.). But the trade union's assistance to an employee in the settlement of individual labour disputes is much more developed. That's why it will be treated separately.

## 2. Trade union's assistance to an employee before the labour court

The typical way in which the trade union may assist an employee consists in acting on his/her behalf in a court by a trade union representative as his/her plenipotentiary (art. 465.1 C.C.P.). This regulation grants an employee the right to be represented by a person who knows well all circumstances of the dispute and is fully engaged on the employee's side. Furthermore, a trade union representative may be a union activist not employed by the defendant employer and as a consequence he/she does not risk to expose him/herself to the employer's displeasure. Last, but not least, a trade union representative allows an employee to avoid expenses due to the barrister's participation in a trial.

According to the Polish law, a trade union may also file a suit on behalf of an employee (art. 61, 62 and 462 C.C.P.), but only with a previous consent of an employee. The same right has also a labour inspector.<sup>10</sup>

A very particular trade union's right in the individual labour disputes settlement consists in presenting to the court an opinion having a substantial significance in the examining case (art. 63 C.C.P.). The opinion has to be expressed in a form of a trade union's organ resolution or statement. Generally it is a resolution of works' trade union unit which takes a position when a disputed case is a precedent for the following employees' claims or when the examined claim is a result of serious violence of the law committed by the employer. It is obvious that such a trade union's opinion strengthens the employee's position in a trial and helps him/her to obtain a favourable judgement in his/her case.

To have a full image of trade unions' role in the field of individual labour disputes settlement one has to remind their participation in the establishment of the conciliation commission in agreement with the employer.

<sup>10</sup> See more K. Baran, *Postępowanie w sprawach z zakresu prawa pracy (Proceedings in the labour law case)*, Infotrade Publ., Gdansk-Kraków 1999, at. 183 and foll.

## V. FINAL REMARKS

1. The Polish system of individual labour dispute settlement has in principle a judicial character. Its reestablishment is a result of the fundamental political transformation following the birth of the free trade union “Solidarity”. This system is fully harmonized with the new Polish Constitution of 1997 which grants everyone the right to a fair and public hearing of his/her case before a competent, impartial and independent court (art. 45.1 of the Constitution).

2. The conciliation procedure does not undermine the judicial character of individual labour disputes settlement since it has a voluntarily character and does not determine an access to the court. Moreover, an agreement reached before a conciliation commission may be submitted to the court’s control on the employee’s demand.

3. The place of labour courts in the Polish judiciary remains, however, controversial since they are not fully separated from civil law courts, as it used to be in Poland before the World War II.<sup>11</sup> One can argue that fully separated labour courts could be more specialised and efficient while protecting the legality in the field of the labour law.

4. The role of trade unions in labour disputes settlement looks very developed in the light of Polish labour law provisions. Nevertheless, in practice that role is rather limited since employees rarely request unions’ assistance in the court. Furthermore, the number of unionised employees in Poland is in decrease, due to the evolution of employment and professions. In the private sector trade unions are very rare as employers are generally unfavourable to them and because private firms are in majority of a very small size.<sup>12</sup>

5. One can also suppose that quite a lot of employees’ claims remain not revealed because they are afraid of losing their job. This employees’ attitude is in clear connection with the unemployment which nowadays is very high in Poland and has a tendency to increase due to the intensive reconstruction of the public economic sector.<sup>13</sup>

11 See Florek, Zielinski, *Prawo pracy*, at 281.

12 See J. Gardawski, B. Gaciaryz, A. Mokrzyzewski, W. Panków, *Rozpad bastionu? Związki zawodowe w gospodarce sprywatyzowanej? The fall of bastion? Trade unions in the privatised economy*, Friedrich Ebert Stiftung Publ., Warszawa 1999, at 95 and foll.

13 According to the recent statistic data the present rate of unemployment in Poland is about 14%.